

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED ::16-12-2006

CORAM

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

WRIT PETITION No.14387 OF 2004 & WPMP.17014/04

V.Poongodi

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Petitioner

-vs-

1.State of Tamil Nadu,
rep.by Secretary,
School Education, Fort St.George,
Chennai - 600 009.

2.The Director of School Education,
College Road,
Chennai - 600 006.

3.Chief Educational Officer,
Chennai -600 015.

4.District Educational Officer (South),
Chennai - 600 008.

5.The Correspondent,
Guntur Subbiah Pillai T.Nagar Secondary School,
Chennai - 600 017.

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Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus calling for the records relating to the order of the 2nd respondent made in Na.Ka.No.60742/W2/W6/03 dated 22.04.2004 and consequently further directing the 2nd respondent to consider the 5th respondent proposal dated 30.06.2003 and grant approval to the appointment of the petitioner as P.G.Asst (Chemistry) in the 5th respondent school against sanctioned post fell vacant as on 01.06.2001 with effect from 31.5.2003 without reference to the G.O.Ms.No.125 School Education (X2) Department dated 12.11.2003 and G.O.Ms.No.4 School Education dated 19.01.2004 and pass further action.

For petitioner : Mr.T.Sellapandian
For respondents 1 to 4 : Mrs.C.K.Vishnu Priya,
Govt.Advocate.
For respondent 5 : No appearance

O R D E R

The case of the petitioner is that she attended the interview for the post of P.G.Teacher in Chemistry in the fifth respondent school and she was appointed on 31.05.2003. A proposal was sent to the District Educational Officer, South Chennai, for approving the appointment of the petitioner. While so, the Director of School Education addressed a letter that from 01.06.2003 onwards, no appointment of teachers should be made in any vacant post.

2. The contention of the petitioner is that the post was vacant prior to 01.06.2001 and permission was also given by the District Educational Officer on 19.03.2003 itself to fill the vacancy and in pursuance of the same, an interview was conducted and she was appointed. As such, the letter of the Government dated 26.05.2003 will not create any hurdle as far as the appointment of the petitioner is concerned. Since the appointment of the petitioner was not approved, Writ Petition No.28351 of 2003 was filed by the petitioner to consider the proposal and the above Writ Petition was disposed of, directing the fourth respondent to consider the petitioner's appointment proposal dated 30.06.2003 and pass orders on its own merits within two months from the date of receipt of copy of the order in the above Writ Petition.

3. It is stated that the order copy is served and the first respondent passed an order in G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003, bringing amendment to the Private Schools Act, by which a new cadre, namely, Junior Grade P.G.Assistant was introduced. The petitioner states that it has no retrospective effect and accordingly she is entitled to be appointed in the original post, but not in the Junior Grade P.G.Assistant. Therefore, the petitioner prays for a direction to the Director of School Education to approve her earlier appointment.

4. The main contention of the petitioner is that the post fell vacant as early as 01.06.2001; permission was granted by the State to fill up the post on 19.03.2003; accordingly, interview was held on 31.05.2003; appointment order was issued to the petitioner and the same was sent to the Directorate for approval; in the meanwhile, there was a ban and the appointment of teachers due to the ban was set aside by the High Court; the High Court has also given a direction to consider the case of the petitioner for appointment as per the proposal dated 30.06.2003 and in such circumstances, the respondents must consider her case and issue an appointment order.

5. Respondents filed a counter, wherein it is stated that in accordance with the Government instructions, the Director of School Education, in his letter No.45914/6/2002, dated 26.05.2003, has instructed the D.E.Os. and C.E.Os. that no appointment of teachers should be made in any vacant post from 01.06.2003.

6. The contention of the respondents is that by that date i.e., 01.06.2003, there was no appointment in favour of the petitioner. Admittedly, interview was held only on 31.05.2003 and the fifth respondent issued an order to the petitioner appointing her in the post with effect from 02.06.2003, subject to the approval of D.E.O. and the approval could not be given, in view of the Government instructions.

7. Thus, the contention of the respondents is that the Government Order not to fill up the vacancies is dated 26.05.2003 whereas the appointment order is dated 31.05.2003 and the appointment will come into effect from 02.06.2003. Therefore, both are subsequent to the orders of the Government and as the appointment in question is made against the orders of the Government, the same cannot be considered.

8. The further contention of the respondents is that in order to comply with the orders of the Hon'ble High Court in W.P.No.28351of 2003, the second respondent passed an order on 22.04.2004, directing the fourth respondent to consider the approval of the appointment of the petitioner as Junior Grade P.G.Assistant with consolidated pay and accordingly the orders are issued.

9. It is also contended that the Government through G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003, brought an amendment, clearly stating that as and when permanent vacancies arise in various categories of teacher posts, the Junior Grade Teachers will be posted and till then, they will be allowed on consolidated pay.

10. Heard the arguments of both sides.

11. Even according to the petitioner, she was not appointed as on 01.06.2003 and there was ban on appointments. However, the said ban was set aside. While so, in W.P.No.28351of 2003, a direction was given to the respondents to consider the petitioner's appointment proposal dated 30.06.2003 and pass orders on its own merits and in accordance with law within two months. The said order was passed on 10.10.2003. Accordingly, the respondents considered the case of the petitioner.

12. Admittedly, by the date of the order i.e., 10.10.2003, G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003, was not in force. Therefore, by the date of the order, there was no amendment to the Tamil Nadu Private Schools (Regulation) Act,1973, and the cadre of Junior Grade P.G.Assistant was not introduced.

13. Since the Court's direction is dated 10.10.2003 and it is to consider the proposal of the petitioner for appointment as a P.G.Teacher and not as a Junior Grade P.G.Assistant, the respondents have to appoint the petitioner only as a P.G.Assistant in Chemistry. The petitioner was called for interview on 31.05.2003 and she was selected and an appointment order was issued, but, in view of ban orders on 26.05.2003, which are five

days prior to the date of interview, the petitioner was unable to enjoy the benefits of her appointment. This court has quashed the ban on appointment of teachers. If there was no ban as on 31.05.2003 or as on 02.06.2003, the petitioner would have been appointed as a teacher, but for the ban, the case of the petitioner could not be considered. Now, the ban is set aside through the Court order. Therefore, a direction was given by this Court to consider the case of the petitioner in accordance with the proposal sent by the fifth respondent. The proposal of the fifth respondent is to appoint the petitioner as a P.G.Assistant, but not as a Junior Grade P.G.Assistant. However, the respondents 1 to 3 have taken a convenient stand to defeat the legitimate right of the petitioner. Therefore, the impugned order, appointing the petitioner as a Junior Grade P.G.Assistant, is quashed and the respondents 1 to 5 are directed to issue fresh appointment order, appointing the petitioner as a P.G.Assistant (Chemistry) and permit her to discharge her duties as usual.

14. In the result, Writ Petition is allowed. No costs. Consequently, the connected W.P.M.P.No.17014 of 2004 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit

To

1. The Secretary,
State of Tamil Nadu,
School Education, Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. Chief Educational Officer, Chennai -600 015.
4. District Educational Officer (South), Chennai - 600 008.
5. The Correspondent,
Guntur Subbiah Pillai T.Nagar Secondary School,
Chennai - 600 017.

1 cc To Mr.S.Mani, Advocate, SR.63125.

W.P.No.14387 OF 2004

GGK(CO)
RVL 04.01.2007